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No. 08-1247

**In The  
Supreme Court of the United States**

STAR NORTHWEST, INC., a Washington corporation d/b/a  
Kenmore Lanes and 11<sup>th</sup> Frame Restaurant & Lounge,  
*Petitioner,*

v.

CITY OF KENMORE, a Washington municipal corporation,  
and KENMORE CITY COUNCIL, the legislative  
body of the City of Kenmore,  
*Respondents.*

*On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Ninth Circuit*

**BRIEF IN OPPOSITION**

DAN LOSSING  
ROSEMARY LARSON  
INSLEE BEST DOZIE & RYDER  
777 108<sup>TH</sup> AVE. NE. #1900  
BELLEVUE, WA 98004  
(425) 455-1234

JAYNE L. FREEMAN  
*Counsel of Record*  
KEATING BUCKLIN & MCCORMACK  
800 5<sup>TH</sup> AVENUE, STE. 4141  
SEATTLE, WA 98119  
(206) 623-8861

*Counsel for Respondents*

May 8, 2009

## QUESTION PRESENTED

1) Whether Petitioner has presented a compelling reason to grant the Petition, where the Ninth Circuit's decision affirming dismissal of a substantive due process claim is consistent with Washington State legislation, regulations, and controlling intermediate appellate decisions specifically prohibiting municipalities from granting amortization periods to cardrooms when enacting a gambling ban, and therefore does not conflict with an earlier State Supreme Court decision generally endorsing amortization periods for other terminated non-conforming uses or present an important question of federal law?

2) Whether Petitioner has presented a compelling reason to grant the Petition, where the issue of granting an amortization period for a cardroom operating on a one-year state license is moot because the cardroom has continued to operate for more than three years since the City banned gambling and the cardroom's original license expired?

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## STATUTES INVOLVED

RCW 9.46.010 states the legislative intent of the Washington State Gambling Act of 1973:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; ...

RCW 9.46.285 establishes state preemption of gambling regulation in Washington:

**Licensing and regulation authority, exclusive.** This chapter constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity and the state preempts such licensing and regulatory functions, except as to the powers and duties of any city, town, city-county, or county which are specifically set forth in this chapter. . . . Any such city, town, city-county, or county may

thereafter enact only such local law as is consistent with the powers and duties expressly granted to and imposed upon it by chapter 9.46 RCW and which is not in conflict with that chapter or with the rules of the commission.

*RCW 9.46.295* establishes limited municipal authority to ban gambling in local jurisdictions:

**Licenses, scope of authority -- Exception.**

Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

*WAC 230-04-175* (in effect until January 1, 2008) states no vested rights in gambling licenses issued by the state gambling commission:

**License does not grant vested right.** The issuance of any license by the commission shall not be construed as granting a vested right in any of the privileges so conferred.

## INTRODUCTION

Star Northwest's Petition for a Writ of Certiorari fails to present a compelling reason to review what is merely a state law dispute dressed up as a federal question. Ignoring Washington State case law and legislation that expressly prohibit cities such as Kenmore from granting the amortization period to which this casino-owner claims it is entitled, Star Northwest cites case law generally discussing pre-termination amortization for other types of non-conforming uses. Not one case rules that local governments are required to provide amortization periods for gambling establishments. In fact, historically gambling has been treated as distinguishable from other property uses, both by Washington and federal courts, and the State of Washington has completely preempted the field of gambling regulation.

A Washington State statute dictates that gambling licenses issued by the State Gambling Commission can last no longer than one year. These licenses create no vested right in a gambling operation. The state legislature has granted local jurisdictions (cities and counties) authority to allow or completely prohibit cardrooms in their jurisdiction—but nothing in between. State law prohibits cities from allowing “sunset clauses” or “amortization” to casinos once they become a prohibited land use. Star Northwest does not challenge this state legislation that guides the City of Kenmore's hand, nor is the State of Washington a party to this action. Surprisingly, the Petition fails to even reference the controlling legislative and appellate authority, despite acknowledging that it is Washington

State law that defines the nature and scope of any potential property right.

Further, the issue presented by Star Northwest has become moot since the Eleventh Frame has already attained an amortization period through litigation. Despite originally challenging the gambling ban because it failed to allow the casino to operate for the remainder of its one-year license, the Eleventh Frame has now continued to operate for more than three years since the City of Kenmore enacted an ordinance to ban cardrooms within its City limits. The gambling license the Eleventh Frame held when the gambling ban was enacted expired at the end of 2006.

Finally, the Petition should be denied because the lower court properly upheld dismissal of Star Northwest's substantive due process claim. Star Northwest challenges the Ninth Circuit's decision based on its lack of detailed written analysis. In reality, the decision to affirm dismissal of the substantive due process claim was so clear it did not warrant lengthy discussion.

### **COUNTER-STATEMENT OF THE CASE**

Contrary to Star Northwest's representation that "the City was apparently not concerned with any impact on gambling at Kenmore Lanes" prior to acting to ban social cardrooms in 2005 (Petition at p. 2), the City Council and citizens of Kenmore consistently expressed concerns about regulating gambling since the City's inception, and the City Council's decision to ban cardrooms occurred after more than seven years of public debate, evaluation, and intervening court decisions limiting the City's options. Kenmore



incorporated as a city in 1998, just one year after Star Northwest purchased the Kenmore Lanes bowling alley and the Eleventh Frame Cardroom. Previously, the cardroom had operated in unincorporated King County, which allowed gambling in its jurisdiction. Upon incorporation, the City of Kenmore began developing its own land use and other regulations, including those applicable to gambling.

For more than six years, the City Council gathered, considered, and analyzed a variety of different options for ways to regulate gambling. As part of this process, the City conducted citizen surveys, held public hearings between 1999 and 2002, and convened special community meetings on the gambling issue in early 2003. During this time period, others announced intentions of opening casinos in Kenmore; consequently, the specter of multiple casinos locating in the City became a concern as most of Kenmore's neighboring cities had already banned gambling. To preserve the status quo during the lengthy comprehensive planning process, the City Council adopted a number of moratoria ordinances, including a moratorium on card rooms. Thus, the Eleventh Frame was the only casino allowed to operate a cardroom in Kenmore from 1998-2003.

Numerous citizens publicly urged the Council to ban all gambling in Kenmore, citing a litany of social and economic effects of gambling on both the private and public level (i.e., gambling addiction, economic and family instability, decreased property values, inconsistency with the City's Vision Statement, and disproportionate reliance on revenue generated by the Eleventh Frame Casino). Others, primarily Kenmore Lanes employees and owners, urged the Council to

“grandfather in” the Eleventh Frame cardroom if a gambling ban were enacted. In 2003, the Council enacted Ordinance No. 03-167, banning cardrooms but allowing the Eleventh Frame a “grandfather clause” to continue operation as the only casino in Kenmore.

Just four months later, the Washington State Court of Appeals decided *Edmonds Shopping Ctr. Assoc. v. City of Edmonds*, 117 Wn.App. 344, 71 P.3d 233 (Wn.App., Div. I, 2003). The *Edmonds* case involved a nearby city that had banned cardrooms pursuant to Washington’s Gambling Act of 1973 (RCW 9.46.010, *et seq.*) and attempted to institute a phase-out of then-existing cardrooms (*i.e.*, “Sunset clause” or “amortization”). The *Edmonds* plaintiff challenged the ordinance based on a state statute, under which cities may “absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.” *See*, RCW 9.46.295. The appellate court agreed with the plaintiff that “[i]nstituting a schedule to phase out existing gambling activities is not absolutely prohibiting gambling activities. “... [D]ifferentiating between existing and future uses is more regulatory in nature, thus violating RCW 9.46.295.” *Edmonds*, 117 Wn.App. at 358. Based on this interpretation of the state statute, the court ruled that a complete ban on gambling *was* constitutional, but struck down the City’s “sunset” clause that exempted existing card rooms in Edmonds from the prospective gambling ban. *Id.*

In light of the *Edmonds* decision, a prospective casino owner (Len Griesel) then sued the City of Kenmore challenging its 2003 decision to “grandfather” the Eleventh Frame Casino but exclude

new cardrooms from opening. The Council then voluntarily repealed the challenged "grandfather" ordinance and adopted another card room moratorium to allow further evaluation. The City Council continued to receive public testimony, conducted an advisory public vote on gambling regulation, and twice extended the moratorium precluding new casinos from locating in Kenmore to compete with the Eleventh Frame. The number of citizens voicing support of a gambling ban in 2004 (49.61%) were essentially equal to the number opposing a ban (50.39%)(many of those only expressing concern about the bowling alley). Meanwhile, the Eleventh Frame continued to operate its cardroom in Kenmore to the exclusion of all others.<sup>1</sup>

In December 2004, the King County Superior Court in Washington ruled in the *Griesel v. Kenmore* case that Kenmore's repeated use of moratoria since 1999, which allowed The Eleventh Frame to continue operating a cardroom as a monopoly for more than five years, constituted an unlawful *regulation* of gambling under Washington State law (*Edmonds, Paradise* and RCW 9.46.295). The court ordered Kenmore to decide whether it wanted to ban or allow *all* gambling when its current moratorium ended in 2005, but ruled that Kenmore could not continue to allow one facility (The Eleventh Frame) to operate while prohibiting others. *Id.* See, Appendix A. Under this direct order from the

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<sup>1</sup> In the meantime, the Washington State Court of Appeals again confirmed that the state Gambling Act allowed cities and counties to completely ban gambling within their jurisdiction and rejected substantive due process challenges under a CR 12(b)(6) standard. See, *Paradise, Inc. v. Pierce County*, 124 Wn.App. 759, 102 P.3d 173 (Wn.App., Div. I, 2004), *rev. den.*, 154 Wn.2d 1027, 120 P.3d 73 (July 13, 2005).

court, the City Council continued deliberating the issue, and held even more public hearings on a potential gambling ban in 2005.

On December 19, 2005, after yet more citizen comment, the Kenmore City Council passed "Agenda Bill No. 05-0237 – Ordinance No. 05-0237 Prohibiting Social Card Games Within the City." Based on RCW 9.46.295, the *Edmonds* decision, the interim decision in *Paradise*, and Judge Lukens' order in the *Griesel* case, the Council was clearly prohibited from allowing The Eleventh Frame to continue operating a cardroom after the ban went into effect, for any length of time. Nor could it lawfully delay enactment of a gambling ban any further, given the specific direction of Judge Lukens. Consequently, the ordinance as passed did not specifically allow The Eleventh Frame a grandfather clause, a sunset period, or an exemption. The ordinance was to go into effect December 29, 2005, but Star Northwest immediately sought and was granted a temporary restraining order by federal district court. As a result, the Eleventh Frame has never ceased its gambling operations since the gambling ban was enacted more than three years ago.

## **REASONS FOR DENYING THE PETITION**

- I. The Ninth Circuit Court of Appeals Decision Does Not Conflict With a Washington State Supreme Court Decision on an Important Federal Question, and Therefore No Compelling Reason Exists For Granting Review.**

Star Northwest's Petition fails to disclose significant controlling case law and legislation, and

establishes no compelling reason for review of the Ninth Circuit panel's 3-0, unpublished decision. Surprisingly, the Petition fails to even mention the specific controlling authority in *Edmonds Shopping Center v. City of Edmonds*, 117 Wn.App. 344, 71 P.3d 233 (Wn.App., Div. I, 2003), *Paradise Inc. v. Pierce County*, 124 Wn.App. 759, 102 P.2d 173 (Wn.App., Div. I, 2004), and the Washington State Gambling Act of 1973 (RCW Ch. 9.46), which render the general propositions set forth in *Rhod-A-Zalea v. Snohomish County*, 959 P.2d 1024 (Wash. 1998) inapplicable. More importantly, this dispute arises solely from legislation unique to the State of Washington, in that the state legislature has chosen to expressly prohibit cities from granting amortization periods for cardrooms such as the Eleventh Frame. Thus, the true dispute at issue in this case is so narrow that no other state or federal jurisdiction would benefit from Supreme Court review.

**A. The General Amortization Language In *Rhod-A-Zalea* Is Inapplicable To A Case Controlled By The Washington State Gambling Act.**

In *Rhod-A-Zalea*, the Washington Supreme Court addressed whether a nonconforming use (peat mining operation) was subject to later-enacted police power regulations (new grading permit requirement). The case did not involve a gambling operation or a request for an amortization period, and it was undisputed the

plaintiff operated a legal nonconforming use under state and local law.<sup>2</sup>

Contrary to Star Northwest's statement(Petition, p. 17), that "the Washington Supreme Court held that an ordinance immediately terminating a legal nonconforming use was a substantive due process violation *regardless* of the reasonableness of the City's purpose," all references to "amortization" in *Rhod-A-Zalea* were merely dicta. Thus, *Rhod-A-Zalea* does not establish what the State Supreme Court's position would be if faced with the issue of amortization for prohibited gambling operations. See, *State v. Frost*, 160 Wn.2d 765, 775, 161 P.3d 361 (2007)(Washington Supreme Court admonishes not to treat dicta in its rulings as dispositive that do not "answer [] the question[s] presented in the case at bar); *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 545-546 (2005)(formula repeated in dicta but never the basis for judgment is not owed *stare decisis* weight).

Rather, federal courts are bound by the decisions of a state's intermediate appellate court unless there is *persuasive* evidence that the highest state court would rule otherwise. See, *Six Companies v. Highway Dist.*, 311 U.S. 180 (1940); *West v. AT&T Co.*, 311 U.S. 223, 236-237 (1940)(federal court is not free to reject state rule announced by intermediate appellate state court unless convinced by other persuasive data that the highest court would decide otherwise on same facts).

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<sup>2</sup> In fact, no case cited by Star Northwest involves a gambling operation or any other use deemed "nuisance-like" and traditionally subject to prohibition or suppression. The Petition for Review is devoid of any authority specific to gambling.



And, Washington appellate decisions indicate that gambling activity is subject to a local government's broad power of prohibition or suppression, and even approved gambling activity is a legislative privilege, not an inherent right. See Brief in Opposition, Sections I.B and I.C.

The *Rhod-A-Zalea* court did confirm that any "vested" or "protected" right to continue a nonconforming use, and a local government's corresponding authority to limit or terminate nonconforming uses, are only as broad as "applicable enabling acts" and the Constitution. *Id.*, 136 Wn.2d 7. Here, the Washington State Gambling Act of 1973 is the enabling act that controls any right Star Northwest may have to operate a cardroom and the scope of Kenmore's authority to regulate gambling within its City limits. That statute, and case law interpreting its application, allows cities to ban gambling but not to allow amortization periods for cardrooms. As discussed below, there is simply no constitutionally-protected property right in the continued operation of a gambling business.

**B. The State of Washington Expressly Prohibits Amortization Periods For Cardrooms, and Municipalities Must Follow Specific State Statutes and Controlling Authority That Provide Exceptions To General Principles of Law.**

Under Article XI, Section 11 of the Washington State Constitution, a city may make "all such local police...regulations as are not in conflict with general laws." Local regulation yields to a state statute when "conflict exists such that the two cannot be

harmonized” and the local regulation “permits or licenses that which the statute forbids and prohibits, and vice versa.” *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.3d 273 (1998). An ordinance that conflicts with state law is invalid. *Schulz v. Snohomish County*, 101 Wn.App. 693, 5 P.3d 767 (2000); Washington Constitution Article XI, §11.

The State of Washington expressly created and defined the limited scope of any right to operate a cardroom, and correspondingly established the scope of local authority to regulate them. RCW 9.46.0325 authorizes social card games, but only when licensed and operated in accordance with Chapter 9.46 RCW. Only the Washington State Gambling Commission has authority to issue a license to operate a social card game, and only **for a period not to exceed one year**. RCW 9.46.070. See, Appendix B.

The Washington State legislature has completely preempted the field of licensing and regulating gambling activities with the exception that:

**Licenses, scope of authority -- Exception.**

... a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

RCW 9.46.295; *see also*, RCW 9.46.285.

Pursuant to RCW 9.46.295, a city may absolutely prohibit a gambling activity within its boundaries, but if the city does so, it may not authorize existing



gambling activities to continue, or create a schedule to phase out existing activity. Under Washington law, any local prohibition must apply equally to all future and existing gambling activity. *Edmonds Shopping Ctr Assoc. v. City of Edmonds*, 117 Wn.App. 344, 358, 71 P.3d 233 (2003)(upholding gambling ban but striking down City's attempt to treat existing casinos as non-conforming uses and grant amortization period); *Paradise Inc. v. Pierce Cty.*, 124 Wn.App. 759, 102 P.2d 173 (Wn.App., Div. I, 2004). In enacting Ordinance No. 05-0237, which parallels the statutory language, Kenmore appropriately exercised the authority expressly delegated to it by the state in RCW 9.46.295.

The Washington Supreme Court did not review either the *Edmonds* or *Paradise* decisions. Neither appellate opinion referenced *Rhod-A-Zalea*, despite being decided five and six years after *Rhod-A-Zalea* was issued. Both decisions rejected substantive due process claims based on the Washington State Constitution, which is more restrictive than the corresponding Fourteenth Amendment of the United States Constitution in protection of substantive due process rights.

**C. The General Rule in *Rhod-A-Zalea* Regarding Amortization Assumes The Existence of A Constitutionally-Protected Property Right; The Eleventh Frame Did Not Have A Constitutionally Protected Right In A Gambling Operation.**

Gambling activities are significantly different from other activities. As stated by this Court, gambling "implicates **no constitutionally protected right**;

rather, it falls into a category of 'vice' activity that could be, and frequently has been, banned altogether." *U.S. and Fed. Commun. Comm'n v. Edge Broadcasting Co.*, 509 U.S. 418, 426, 113 S.Ct. 2696, 125 L.Ed.2d 345 (1993).<sup>3</sup>

Washington law regarding gambling activity is in accord. Gambling operations are characterized as falling within the category of activities involving a "social or economic evil", that are subject to a local government's broad power of prohibition or suppression. *Northwest Greyhound Kennel Assoc., Inc. v. State*, 8 Wn.App. 314, 320-1, 506 P.2d 878 (1973).

Social or economic evils, such as gambling, and other activities which jeopardize the public health and safety, are subject to the legislature's prohibition, some absolute and others conditional. *Tarver v. City Comm'n.*, 72 Wn.2d 726, 731-33, 435 P.2d 531 (1967). Proscriptions imposed upon gambling activity are entirely within the legislative domain and are essentially immune from judicial interpretation. *Northwest Greyhound Kennel Ass'n., Inc. v. State*, 8 Wn.App. 314, 506 P.2d

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<sup>3</sup> *Carolina-Virginia Racing Ass'n v. Cahoon*, 214 F.2d 830, 833 (4th Cir. 1954) ("no property right to engage in gambling contrary to state law"); *Payne v. Fontenot*, 925 F.Supp 414 (1995) (no property or liberty interest in gaming license under statute making license a privilege within state's discretion, and no right to earn a living by operating gaming establishment); *Jacobsen v. Hannifin*, 627 F.2d 177, 180 (9th Cir. 1980) (no protectible property interest in gaming license based on statute allowing denial for any cause deemed reasonable); *Kraft v. Jacka*, 872 F.2d 862 (9th Cir. 1989).

878 (1973). Consequently, **any approved gambling activity is a legislative privilege and not an inherent right.**

*State v. Gedarro*, 19 Wn.App. 826, 829, 579 P.2d 949 (1978)(*emph. added*); *Paradise*, 124 Wn.App. at 772-3. Most recently, in holding that an amendment to Washington's Gambling Act regarding internet gambling did not violate the federal Constitution's Commerce Clause, a Washington appellate court noted that "it is critical to recognize that ... Washington from its inception considered gambling to be an activity with significant negative effects and has always strictly regulated gambling" and then held "[p]ut simply, Washington has a longstanding and legitimate interest in tightly controlling gambling. That interest is a pure exercise of the traditional police power, and is justified by the State's desire to safeguard its citizens both from the harms of gambling itself and from professional gambling's historically close relationship with organized crime." *Roussio v. State*, 204 P.3d 243, \_\_\_ (Wn. App. Div. I, March 23, 2009)("all 'gaming' generally has long been considered to fall 'within the category of social and economic evils' that are the natural subject of government regulation").<sup>4</sup>

The purpose of allowing an amortization period for a nonconforming use is to provide the property owner the opportunity to recognize its investment and

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<sup>4</sup> See also, McQuillin, *The Law of Municipal Corporations* § 24.129 (3rd Ed. 1997)("The maintenance of a gaming house is a public nuisance or a nuisance per se, at common law and usually under statute, at least where it is maintained in violation of law; and as such it is subject to abatement by injunction.").

alleviate what might otherwise be a harsh result. However, as noted in *Paradise, Inc. v. Pierce County*:

RCW 9.46.295 clearly and specifically stated that the [municipality] could ban all gambling at any time. There is no guarantee in the statute that any gambling operation could recoup its investment if gambling was banned.

*Paradise*, 124 Wn.App. at 776.

Just like the plaintiff in *Paradise*, Star Northwest has been on notice since the enactment of RCW 9.46.295 (before Star Northwest purchased the Eleventh Frame Cardroom) that the City of Kenmore had authority to absolutely prohibit its card room business at any time. Simply put, Star Northwest had no vested or constitutionally-protected property right to operate a card room for any length of time.

In fact, when Star Northwest was issued its one-year license in 2005, and when the City enacted its ordinance prohibiting cardrooms, state licensing regulations specifically warned applicants: **“the issuance of any license by the commission shall not be construed as granting a vested right in the privileges so conferred.”** Washington Administrative Code (WAC) 230-04-175 (emphasis added). See Appendix C. Washington Administrative Code regulations carry the force of law in Washington. *Champagne v. Thurston County*, 163 Wn.2d 69, 178 P.3d 936 (Wash. 2008). WAC 230-04-175 is consistent with and simply confirmed the common law that a person has no right in the continued operation of a gambling business or license, constitutional or otherwise. Chapter 9.46 RCW specifies that a social

card game may only be operated when licensed and operated pursuant to the regulations adopted under Chapter 9.46. *RCW 9.46.0325*; see also *RCW 9.46.285* (limiting cities to enacting only such local laws that are consistent with Chapter 9.46 and not in conflict with “rules of the commission”). The non-conforming uses at issue in *Rhod-A-Zalea* did not suffer similar statutory restrictions.

Only after the Ninth Circuit issued its decision upholding dismissal of the claims below, Star Northwest subsequently argued (in a petition for rehearing) that WAC 230-04-175 should be disregarded because it was repealed more than two years after Kenmore’s gambling ban was enacted. Even assuming this change would impact the decision below, newly amended administrative regulations are presumed to have prospective—not retroactive—application in Washington. *Champagne*, 163 Wn.2d at 79 (where “the rule revision affects a substantive or vested right” the amendments are only applied prospectively). The 2008 repeal of WAC 230-04-175 would not be applied retroactively to Kenmore’s ordinance enacted in 2005, as the administrative regulation specifically addresses the status of “vested rights.” In any event, issues of interpretation and application of state statutes, regulation, and case law are matters of Washington State law that do not implicate important questions of federal law.

No case cited by Star Northwest holds that a “nonconforming use” that consists of a nuisance-like activity, such as gambling, gives rise to a constitutional right to an amortization period; nor do they address the situation where a specific state statute and specific controlling legal authority

expressly hold that the City cannot grant the amortization period for a cardroom that Star Northwest requests here. The lack of any such authority reflects the absence of an important issue of federal law requiring clarification by this Court.

**II. The Issue of Whether the City of Kenmore's Ordinance Violated the Fourteenth Amendment by Immediately Terminating Gambling Activities Is Moot Because The Eleventh Frame Cardroom Has Continued To Operate For More Than Three Years After Enactment of The Ordinance.**

Star Northwest's Petition to review the right to an amortization period for the Eleventh Frame cardroom should be denied as moot. *Arizonians for Official English v. Arizona*, 520 U.S. 43, 67 (1997)(live controversy must exist at all stages of certiorari review). Star Northwest does not challenge the City of Kenmore's Ordinance on the grounds that it is substantively unconstitutional, but rather because the gambling ban was intended to become effective within ten days of its enactment in 2005. The basis for this challenge no longer exists, as the Eleventh Frame cardroom has continued to operate for more than three years since then.

Through a series of temporary injunctions and stays obtained through litigation, the Eleventh Frame's profitable gambling monopoly has now continued to operate for three more years since the Ordinance was enacted. This is well past the initial "one year" Star Northwest initially requested as amortization to complete the term of the state gambling license it held at the time. *See, Taylor v.*



*McElroy*, 360 U.S. 709 (1959)(when employee was granted security clearance, his suit for such clearance became moot). See also, *Worldwide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9<sup>th</sup> Cir. 2004)(one year amortization period sufficient for zoning changes phasing out lucrative adult entertainment uses protected by First Amendment); *Northend Cinema, Inc. v. City of Seattle*, 90 Wn.2d 709, 585 P.2d 1153 (Wash. 1978)(90-day amortization period sufficient for zoning changes requiring adult theaters to change location or cease displaying adult films).

Regardless of the status of WAC §230-04-175, it is undisputed that any alleged “vested right” in Star Northwest’s cardroom license and gambling operation would have expired more than two years ago—on December 31, 2006. See, RCW 9.46.070 (statutorily limiting gambling license to one-year period). See, *Paradise, Inc. v. Pierce County*, 124 Wn.App. 759, 102 P.3d 173, 182 (Wn.App. Div. I, 2004)(“RCW 9.46.295 clearly and specifically stated that the County could ban all gambling at anytime,” and therefore the fact the casino may lose money on its investment did not effect an injustice).

### **III. The Ninth Circuit Properly Decided That The City of Kenmore’s Gambling Ban Does Not Violate Substantive Due Process Rights Under The Fourteenth Amendment.**

No decision of this Court, any Circuit Court of Appeals, or the Washington State Supreme Court suggests that a local legislative decision to prohibit gambling in compliance with state law, with or

without an amortization period, violates the Fourteenth Amendment.

Star Northwest's attack on the Ninth Circuit's decision focuses on its form over substance, citing the Court's "failure to explain" its analysis as a reason compelling review. However, summary judgment decisions are reviewed *de novo*, and can be affirmed on "any ground that finds support in the record." *Jaffke v. Dunham*, 352 U.S. 280, 281 (1957). Here, several bases exist for rejecting Star Northwest's federal substantive due process claim, and any one of them is sufficient for affirming this decision.

In 2006, the District Court rejected Start Northwest's substantive due process claim based on the preclusion set forth in *Armendariz v. Penman*, 75 F.3d 1311 (9<sup>th</sup> Cir. 1996). The District Court went on to rule that Star Northwest also failed to establish a violation of the Washington State constitution's substantive due process clause, a standard similar but more stringent than the federal standard. *See, Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1217 (6<sup>th</sup> Cir. 1992)(rather than use the "reasonably necessary standard employed by Washington State, federal courts apply the lower "rational basis" test for satisfying due process concerns); compare, *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 787 P.2d 907 (1990)(Washington's three-pronged constitutional due process test).

Further, although *Crown Point Dev., Inc. v. City of Sun Valley*, 506 F.3d 851, 856-57 (9<sup>th</sup> Cir. 2007) does narrow the *Armendariz* ruling, the Court ruled that the Fifth Amendment still does subsume and preclude a substantive due process claim, as held in



*Armendariz*, where the alleged conduct is actually covered by the Takings clause. Entitlement to an amortization period as a means of obtaining compensation has no bearing on the crux of the due process issue—whether substance of the underlying governmental action is patently impermissible, *i.e.*, “having no substantial relation to the public health, safety, morals, or general welfare.” *Id.* at 858, *citing*, *Spoklie v. Montana*, 411 F.3d 1051, 1057 (9<sup>th</sup> Cir. 2005) and *Equity Lifestyle Pty, Inc. v. County of San Luis Obispo*, 548 F.3d 1184 (9<sup>th</sup> Cir. 2008)(post-*Lingle* decisions). In such cases, the remedy is to invalidate the ordinance itself as “no amount of compensation can authorize such action.” *Lingle v. Chevron USA, Inc.* 544 U.S. 528, 543-544 (2005). And here, Star Northwest has already had a three-year “amortization period” since the City’s adoption of the Ordinance.<sup>5</sup>

On appeal in 2008, the Ninth Circuit did not address the preclusion issue, but rejected the substantive due process claim because WAC 230-04-175 expressly prohibited a vested right in a gambling license. In 2009, the Ninth Circuit added that Star Northwest also failed to demonstrate the City’s gambling ordinance was arbitrary and irrational as required by *Lingle*. Either reason sufficiently disposes of Star Northwest’s Fourteenth Amendment substantive due process claim.

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<sup>5</sup> Star Northwest is also pursuing a Takings claim which was dismissed without prejudice as not ripe for failure to first pursue state law remedies. Star Northwest subsequently re-filed its Takings claim in a state court action, which is currently stayed pending resolution of this appeal.

First, the Ninth Circuit properly looked to Washington State law to determine the scope of any right to continue a non-conforming gambling operation, and found an administrative regulation stating the gambling licenses do not create a vested right in the privilege of operating a casino. *See*, WAC 230-04-175. These regulations were adopted pursuant to the State Gambling Act, which also puts would-be casino owners on notice that cities have the authority to ban gambling activities at any time within their jurisdiction. RCW 9.46.295. The state appellate court decisions in *Paradise* and *Edmonds*, clarify that cities such as Kenmore are not allowed to provide amortization periods for casinos. That no other non-conforming land use is subject to such specific state law restrictions more than adequately explains the Ninth Circuit's alleged "departure" from case law discussing in general the termination of "protectable property interests." Petition, p. 22.

Second, even in the absence of WAC 230-04-175, the Ninth Circuit properly held that Star Northwest fails to demonstrate Kenmore's ordinance "fails to serve any legitimate governmental objective" rendering it "arbitrary or irrational" as required by *Lingle*, 544 U.S. 528, 542 (2005). Both the district court (Petition, App. C, pp. 23a-27a) and the appellate panel (Petition, App. B, p. 7a) found the undisputed record established the gambling ban was 1) aimed at achieving a legitimate public purpose (preventing proliferation of cardrooms); 2) uses means reasonably related to achieve that purpose (complete ban was City's only option pursuant to state law); and 3) not unduly oppressive to Star Northwest (ordinance only restricts one activity, it does not eliminate value of the property, and could be anticipated). Thus, the

ordinance satisfied the strict substantial due process standards established by the Washington State Constitution.

The standard for establishing a Fourteenth Amendment violation is much higher than a substantive due process claim under the Washington State Constitution, in that the federal constitution requires proof that the ordinance is "clearly arbitrary and unreasonable," having no relation to public health, safety, morals, or general welfare. *See, Dodd v. Hood River County*, 59 F.3d 852, 864 (9<sup>th</sup> Cir. 1995). It is enough that there is an evil at hand that *might be thought* that the particular legislative measure was a rational way to correct it. *So. Pac. Transp. Co. v. City of Los Angeles*, 922 F.2d 498, 508 (9<sup>th</sup> Cir. 1990)(quoting, *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955)).

The timing of enactment of the gambling ban was far from arbitrary or irrational, as the City of Kenmore was under court order to stop granting the Eleventh Frame/Star Northwest "preferential treatment" by "allow[ing] some gambling (the current license holder) and ban[ning] other gambling (the plaintiff)," noting that "this unequal status cannot continue and is contrary to the spirit and intent of RCW 9.46.225." The King County Superior Court unequivocally ordered the City of Kenmore: "At the end of the six month renewal period [in 2005] the City must take action under RCW 9.46.295 and either ban or permit all gambling activities in the City." *See, Order, App. A*, p. 4.

The City Council thus voted on the gambling ban in December of 2005, pursuant to direction of Court. Any

attempt to delay the effective date of the ordinance would have constituted a violation of this state Court Order directing the City to stop providing "preferential treatment" to the Eleventh Frame cardroom, and any attempt to create an amortization period for existing gambling would have violated RCW 9.46.295. Thus, the Ninth Circuit properly affirmed dismissal of Star Northwest's substantive due process claim; the Ninth Circuit's decision does not misread or conflict with *Lingle*, or any other federal decision.

### CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be denied.

DATED this 8<sup>th</sup> day of May, 2009.

KEATING, BUCKLIN & McCORMACK, INC., P.S.

JAYNE L. FREEMAN, WSBA # 24318  
*Counsel of Record*  
Keating Bucklin & McCormack, Inc., P.S.  
800 5<sup>th</sup> Avenue, Ste. 4141  
Seattle, WA 981004  
P: (206) 623-8861  
F: (206) 223-9423

*Counsel for Respondents City of Kenmore  
& The Kenmore City Council*

# **APPENDIX**

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**APPENDIX A**

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**IN THE SUPERIOR COURT  
FOR THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING**

**N0.03-2-37877-1 SEA**

**[Dated December 2004]**

LEN GRIESEL,	)
	)
Plaintiff	)
	)
vs.	)
	)
CITY OF KENMORE,	)
	)
Defendant	)
	)

**MEMORANDUM OPINION ON MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

THIS MATTER came on for hearing on the Plaintiff's Motion for Partial Summary Judgment Against the City of Kenmore. The parties have submitted memoranda and exhibits in support of and in opposition the motion and presented oral argument.

## DISCUSSION

This case presents a conflict between the power of the City of Kenmore (the "City") to enact moratoria under RCW 36.70A.390 and RCW 35A.63.220 and the power of the City to control gambling under RCW 9.46.295.

The facts are not in substantial dispute. For over five years the City has effectively prevented the Plaintiff, and presumably others, from applying for gambling licenses through the use of a series of moratoria. During this period of time a pre-existing gambling licensee has continued to operate. While the parties may differ on the applicability of a moratorium in the first instance, they both agree that a validly enacted moratorium cannot continue indefinitely and that a court has the authority to determine when a moratorium has been in place for too long a period.

The current moratorium is contained in Ordinance No. 04-0207, effective on July 22, 2004, with an expiration date of January 22, 2005. It is instructive to compare the preamble of this ordinance with the preamble of the first moratorium ordinance adopted in 1999. The preamble of Ordinance No. 04-0207 states:

WHEREAS, the City of Kenmore has adopted a Comprehensive Plan in compliance with the Growth Management Act; and

WHEREAS, gambling activities are not adequately addressed in the City's Comprehensive Plan, interim Zoning Code, or other interim development regulations; and

WHEREAS, the City of Kenmore desires to ensure that the location of such uses is fully and completely analyzed in conjunction with development of the Comprehensive Plan and development regulations required under the Growth Management Act; and

WHEREAS, the City of Kenmore also wishes to ensure public input on these issues; and

WHEREAS, the City desires to preserve the status quo for a period of time to study such uses and address the same; and

WHEREAS, the City desires to preserve the status quo during its time of study by establishing a moratorium on the filing of applications for building and other permits for food or drink establishments desiring to conduct social card game gambling activities, whether as a principal use or as an accessory use, or desiring to expand their existing social card game gambling activities, whether as a principal or an accessory use.

The first moratorium was enacted in Ordinance No. 99-0062 which was adopted on April 26, 1999. Its preamble is identical in all material respects to the Ordinance No. 04-0207 preamble, quoted above.

Similarly, the operative portions of Ordinance 04-0207 are nearly identical to the operative portions of Ordinance 99-0062. Both make the same reference to the scope of the moratorium and both provide for the establishment of a work program to address issues related to social card game and other gambling



activities and to develop proposals for amendment of the Comprehensive Plan, Zoning Code and other development regulations.

During the five years following enactment of the first moratorium the City has enacted additional moratoria as it assessed the impact of *Edmonds Shopping Center Assoc. v. City of Edmonds*, 117 Wn. App. 344, 71 P. 3d 233 (2003), debated the issue on the city council, sought legislative solutions, and conducted a public vote in the fall of 2003, wherein a majority of voters supported the existence of gambling activities. Yet no comprehensive plan or zoning code amendments have been adopted and the City seems no closer to resolving the gambling issue today than it was in 1999.

While the studies have been conducted, the existing use has continued and the Plaintiff and other potential businesses have been barred from even submitting an application. This result is contrary to the spirit and intent of RCW 36.70A.390 and RCW 35A.63.220 which contemplates a time limited study period. This limitation is inherent in the moratorium statutes themselves which provide for an initial six month or one year period. Renewals then can occur in six month intervals, with a public hearing. The fact that renewals are limited in time leads to the conclusion that serial renewals, in one form or the other, for over eight such six month periods, are not appropriate.

This view is shared by the court in *Matson v. Clark County*, 79 Wn. App. 641, 644, 904 P. 2d 317 (1995) where the court recognized the emergency, temporary, and expedient nature of moratorium regulations and

by Professor Settle, who, while commenting on interim zoning, concludes that:

Since the preferential judicial treatment of interim zoning is based upon its temporary and emergency nature, it is vulnerable if there is not an ascertainable time limit on its duration which is rational in light of the emergency it addresses. Richard L. Settle, *Washington Land Use and Environmental Law and Practice*, § 2.13, at 74 (ed. 1983).

In this case, the moratorium has been anything but temporary and whatever emergency existed in 1999 has surely passed. In fact, after five years the City has engaged in an extensive political process and most certainly has all of the information it needs to make a reasoned decision. There is no further need for status quo preservation.

RCW 9.46.225 does not prevent the city from engaging in a land use and political dialogue over the appropriateness of gambling in the City or from preserving the status quo while it does so. The statute, however, does require that a decision be made – either all gambling is banned or all gambling is permitted, with locational and other limits as permitted by the Growth Management Act and applicable zoning statutes. Currently, the moratorium effectively allows some gambling (the current license holder) and bans other gambling (the Plaintiff) – this unequal status cannot continue and is contrary to the spirit and intent of RCW 9.46.225.

Recognizing the authority of the City under RCW 36.70A.390 and RCW 35A.63.220 and also recognizing

that the stated purposes of the current moratorium are the same as first stated in April, 1999, it is time for closure of the study and political process.

Accordingly, Ordinance No. 04-0207 may be extended for one additional six month period after January 22, 2005 (assuming the statutory prerequisites to renewal are satisfied) so the City may complete its planning process, take into account the full ramifications of the public vote, and pursue any other policy choices that are available. At the end of the six month renewal period the City must take action under RCW 9.46.295 and either ban or permit all gambling activities in the city.

Nothing in this Opinion, however, is intended to suggest what locational and other limits might be appropriate or permitted under the Growth Management Act or other applicable zoning or comprehensive planning statute or ordinance.

### CONCLUSION

As provided and limited by this Memorandum Opinion, the Plaintiff's Motion for Partial Summary Judgment is Granted.

DONE IN OPEN COURT this \_\_ day of December, 2004.

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Terry Lukens  
Judge

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**APPENDIX B**

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**Revised Code of Washington (RCW)  
Chapter 9.46 RCW [Excerpts]  
Gambling - 1973 Act**

**9.46.010 Legislative declaration.**

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is

participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punch boards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

The legislature further declares that raffles authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder, with the exception of this section and RCW 9.46.400.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.

[1996 c 101 § 2; 1994 c 218 § 2; 1975 1st ex.s. c 259 § 1; 1974 ex.s. c 155 § 1; 1974 ex.s. c 135 § 1; 1973 1st ex.s. c 218 § 1.]

### **9.46.070 Gambling commission — Powers and duties.**

The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punch boards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend, or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said



person, association, or organization to utilize punch boards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the



premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission shall require fingerprinting and national criminal history background checks on any persons seeking licenses, certifications, or permits under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity. All national criminal history background checks shall be conducted using fingerprints submitted to the United States department of justice-federal bureau of investigation. The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks. In identifying these persons, the commission must take into consideration the nature, character, size, and scope of the gambling activities requested by the persons making such applications;

(8) To require ~~that~~ any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo. In establishing limitations pursuant to this subsection the commission shall take into account (i) the nature, character, and scope of the activities of the licensee; (ii) the source of all other income of the licensee; and (iii) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from nonprofit, purposes. However, the commission's powers and duties granted by this subsection are discretionary and not mandatory;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization,

corporation, or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0282;

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments. However, the commissioner's powers and duties granted by this subsection are discretionary and not mandatory.

In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the

class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name,

address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter; and

(20) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

[2002 c 119 § 1; 1999 c 143 § 6; 1993 c 344 § 1; 1987 c 4 § 38; 1981 c 139 § 3. Prior: 1977 ex.s. c 326 § 3; 1977 ex.s. c 76 § 2; 1975-'76 2nd ex.s. c 87 § 4; 1975 1st ex.s. c 259 § 4; 1974 ex.s. c 155 § 4; 1974 ex.s. c 135 § 4; 1973 2nd ex.s. c 41 § 4; 1973 1st ex.s. c 218 § 7.]

**9.46.0325. Social card games, punch boards, pull-tabs authorized.**

The legislature hereby authorizes any person, association or organization operating an established business primarily engaged in the selling of food or drink for consumption on the premises to conduct social card games and to utilize punch boards and pull-tabs as a commercial stimulant to such business when licensed and utilized or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto.

[1987 c 4 § 29. Formerly RCW 9.46.030(4).]



**9.46.295 Licenses, scope of authority —  
Exception.**

Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

[1974 ex.s. c 155 § 6; 1974 ex.s. c 135 § 6.]



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**APPENDIX C**

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Washington Administrative Code (WAC)

**WAC 230-04-175 License does not grant vested right.** The issuance of any license by the commission shall not be construed as granting a vested right in any of the privileges so conferred.

[Order 25, § 230-04-175, filed 10/23/74; Order 12, § 230-04-175, filed 2/14/74; Order 5, § 230-04-175, filed 12/19/73.]